

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ZIR ION WEEMS,
Petitioner,
v.
ROBERT BURTON, et al.,
Respondents.

No. 2:21-cv-01392-KJM-CKD

ORDER

Petitioner, a state prisoner proceeding through counsel, has filed this application for a writ of habeas corpus under 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On December 11, 2023, the magistrate judge filed findings and recommendations, which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. Petitioner has filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a *de novo* review of this case. Having reviewed the file, the court finds the findings and recommendations to be supported by the record and by the proper analysis.

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Petitioner also requests a certificate of appealability. *See* ECF No. 15 at 9.¹ Under Rule 11(a) of the Federal Rules Governing Section 2254 Cases, the court has considered whether to issue a certificate of appealability. Before petitioner can appeal this decision, a certificate of appealability must issue. *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). Where the petition is denied on the merits, a certificate of appealability may issue under 28 U.S.C. § 2253 “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The court must either issue a certificate of appealability indicating which issues satisfy the required showing or must state the reasons why such a certificate should not issue. *See* Fed. R. App. P. 22(b). Where the petition is dismissed on procedural grounds, a certificate of appealability “should issue if the prisoner can show: (1) ‘that jurists of reason would find it debatable whether the district court was correct in its procedural ruling’; and (2) ‘that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right.’” *Morris v. Woodford*, 229 F.3d 775, 780 (9th Cir. 2000) (quoting *Slack v. McDaniel*, 529 U.S. 473, 120 S. Ct. 1595, 1604 (2000)). For the reasons set forth in the Magistrate Judge’s findings and recommendations, the court finds that issuance of a certificate of appealability is not warranted in this case.

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed December 11, 2023, are adopted in full.
2. Petitioner’s application for a writ of habeas corpus is denied.
3. Petitioner’s request for a certificate of appealability is denied.

DATED: April 15, 2024.


CHIEF UNITED STATES DISTRICT JUDGE

¹ In this order citations to page numbers in documents filed in the Court’s Electronic Case Filing (ECF) system are to the page number assigned by ECF and located in the upper right hand corner of the page.